



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

March 4, 1996

Mr. John Riley  
Texas Natural Resource Conservation Commission  
P.O. Box 13087  
Austin, Texas 78711-3087

OR96-0291

Dear Mr. Riley:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID #37637.

The Texas Natural Resource Conservation Commission (the "commission") received a request for all documents held by the commission pertaining to Texas Industries, Inc. ("TXI"), excluding documents which disclose the identity of citizen complainants. The commission claims that sections 552.107 and 552.110 except from disclosure the material the requester seeks. We have reviewed the submitted Exhibits A, B, C, and D.

Pursuant to section 552.305 of the Government Code, we notified the party whose proprietary interests are implicated by the request. We received a response from attorneys representing TXI. TXI seeks to withhold the information collectively referred to as Generator Lists and Operational Information within Exhibit D under section 552.110.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Information is excepted from disclosure to the extent that it documents confidences of governmental representatives or constitutes legal advice and opinion rendered to a governmental body. Factual matters may not be withheld e.g., records of calls made, meetings attended, or memos sent. Open Records Decision No. 574 (1990).

We have reviewed the marked documents, Exhibits A and B, and conclude that they contain privileged information. Therefore, the commission may withhold that information. We conclude that some of the information in Exhibit C, which we have marked, is factual and must be released. You may withhold the remaining information in Exhibit C under section 552.107(1).

Section 552.110 excepts from disclosure trade secrets or financial information obtained from a person and confidential by statute or judicial decision. The Texas Supreme Court has adopted the definition of "trade secret" from the Restatement of Torts, section 757, which holds a "trade secret" to be:

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to a single or ephemeral event in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939); see *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5.<sup>1</sup>

After reviewing TXI's arguments and reviewing the information in Exhibit D, we conclude that TXI has made a *prima facie* case that the documents under Exhibit D comprise trade secrets. Therefore, the commission must withhold the documents in Exhibit D under section 552.110.


We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts

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<sup>1</sup> The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are: "(1) the extent to which the information is known outside of [the company]; (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease of difficulty with which the information could be properly acquired or duplicated by others." RESTATEMENT OF TORTS, § 757 cmt. b (1939); see also Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Janet I. Monteros  
Assistant Attorney General  
Open Records Division

JIM/ch

Ref.: ID# 37637

Enclosures: Submitted documents

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